IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6394 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHBHAI PRATAPBHAI DARBAR FRIEND OF DETENUE

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR NM KAPADIA for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 11/01/2000

ORAL JUDGEMENT

#. Heard Mr. N.M.Kapadia, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for respondents No. 1,2 & 3.

#. The petitioner Rameshbhai Pratapbhai Darbar has filed

the present petition under Article 226 of the Constitution of India to challenge the detention order dated 13-4-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu Pratapsingh Pradipsingh Rajput in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short').

#. That the grounds of detention served and supplied to the detenu, a copy of which is produced at Annexure - C to the petition interalia discloses that a prohibition case vide C.R.No : 194 of 1999 was registered against the detenu at Katargam Police Station and Indian made Foreign Liquor was seized from the possession of the detenu and his co accused. That the petitioner was arrested and released on bail on 22-3-1999 and the said matter is pending for trial in the Court. The ground further indicate that two witnesses on assurance of their anonymity have given statements against the prejudicial activities of the detenu on 25-3-99 which pursuant to incident dated 14-3-99 and 24-3-99 respectively. That on the basis of the aforesaid material, the detaining authority - respondent No.1 has come to the conclusion that the detenu - Pratapsingh Pradipsingh Rajput is the bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, detention order is necessary and hence the impugned order is passed.

#. It has been contended at bar on behalf of the petitioner that before passing the impugned order, the detaining authority has failed to consider the aspect of less drastic remedy like claiming cancellation of bail granted to the detenu in registered case of Prohibition at Katargam Police Station. That said aspect having vitiated the subjective satisfaction, has rendered the order invalid.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, the detaining authority has stated in the grounds of detention that detenu was released on bail and that there is likelihood that having got himself released, the detenu would continue his bootlegging activities and thereby, the detention order is necessary. However, nowhere in the grounds of detention, no any explanation is given as to why the less drastic remedy like cancellation of bail under Section 437(5) of CrPC was not resorted to. Under these circumstances, I am constrained to hold that the impugned order is bad in law, on account of non application of mind.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 13-4-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the detenu - Pratapsingh Pradipsingh Rajput is hereby quashed and set aside. The detenu Pratapsingh Pradipsingh Rajput is ordered to be set at liberty forthwith, if not required in any other case. As the detenu is lodged in District jail Jamnagar, writ may be sent to the Superintendent, District Jail, Jamnagar.
Rule to that extent is made absolute.

Date : 11-1-2000 [A.K.Trivedi, J.]

#kailash#